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In the Supreme Court of the United States

October Term, 1968
No. 34

ROGER A. REYNOLDS, MAYER I. BLUM, HERBERT R. CAIN, JR., KATHERINE M. KALLICK, ROSALIE KLEIN, ALFRED J. LAUPHEIMER, EDWARD O'MALLEY, JR., NORMAN SILVERMAN, JULIA L. RUBEL, Constituting the Philadelphia County Board of Assistance, WILLIAM P. SAILER, Its Executive Director, MAX D. ROSENN, Secretary of the Department of Public Welfare of the Commonwealth of Pennsylvania, WILLIAM C. SENNETT, Attorney General of the Commonwealth of Pennsylvania,

Appellants

v.

JUANITA SMITH, Individually, and by Her, Her Minor Children, JOHN SMITH, TABITHA MILLER, SOPHIA PAYNTER, WILLIAM PAYNTER, VONCELL PAYNTER, and on Behalf of All Others Similarly Situated
and
JOSE FOSTER, Individually, and by Her, Her Minor Children JEANETTE FOSTER, ANNIE BEA FOSTER, WILLIAM FOSTER, FRANCES FOSTER,

Appellees

On Appeal from the United States District Court for the Eastern District of Pennsylvania.

BRIEF FOR APPELLANTS

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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1967
No. 1138

ROGER A. REYNOLDS, MAYER I. BLUM, HERBERT R. CAIN, JR., KATHERINE M. KALLICK, ROSALIE KLEIN, ALFRED J. LAUPHEIMER, EDWARD O'MALLEY, JR., NORMAN SILVERMAN, JULIA L. RUBEL, constituting the Philadelphia County Board of Assistance, WILLIAM P. SAILER, Its Executive Director, MAX D. ROSENN, Secretary of the Department of Public Welfare of the Commonwealth of Pennsylvania, WILLIAM C. SENNETT, Attorney General of the Commonwealth of Pennsylvania,

Appellants

v.

JUANITA SMITH, individually, and by her, her minor children, JOHN SMITH, TABITHA MILLER, SOPHIA PAYNTER, WILLIAM PAYNTER, VONCELL PAYNTER, and on behalf of all others similarly situated

and

JOSE FOSTER, Individually, and by her, her minor children, JEANETTE FOSTER, ANNIE BEA FOSTER, WILLIAM FOSTER, FRANCIS FOSTER,

Appellees

On Appeal from the United States District Court for the Eastern District of Pennsylvania.

BRIEF FOR APPELLANTS

OPINION BELOW

The opinion of the United States District Court for the Eastern District of Pennsylvania which is the subject of this appeal is reported in 277 F. Supp 65.

JURISDICTION

The judgment of the Three Judge District Court in favor of appelles was entered on December 18, 1967. Appellants filed their Notice of Appeal on January 2, 1968. The appeal was docketed and Jurisdictional Statement filed on February 21, 1968. Probable jurisdiction was noted by this Honorable Court on March 4, 1968. Jurisdiction of this Court is invoked under Title 28 of the United States Code Section 1253 which provides for direct appeals from decisions of Three Judge District Courts.

STATUTES INVOLVED

The statute of the Commonwealth of Pennsylvania involved is Act No. 21 of the Pennsylvania Legislature, approved June 13, 1967, as follows:

Section 432:

(6) Assistance may be granted only to or in behalf of a person residing in Pennsylvania who:

(i) has resided therein for at last one year immediately preceding the date of application;

(ii) last resided in a state which, by law, regulation or reciprocal agreement with Pennsylvania, grants public assistance to or in behalf of a person who has resided in such state for less than one year.

QUESTION PRESENTED

Whether Section 432 (6) of the Pennsylvania "Public Welfare Code" which requires one year's residence as a qualification for eligibility for public assistances violates the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

STATEMENT OF THE CASE

Appellees are Juanita Smith, individually, and her minor children, John Smith, Tabitha Miller, Sophia Paynter, William Paynter and Voncell Paynter. Appellee Juanita Smith and other plaintiffs from the date of their birth and until December, 1966 resided in the State of Delaware. Since the second week of December 1966, appellees have all resided at 2859 Amber Street, Philadelphia, Pennsylvania.

On February 20, 1967, appellees made application for public assistance and received a grant of $115.00. A second grant in the same amount was received two weeks later on March 10, 1967.

On March 13, 1967, appellee Juanita Smith was informed by the County Board of Assistance that assistance to her and her children would be terminated. This action was taken because appellees did not satisfy the statutory requirement of one year's residence immediately preceding their application.

This suit was filed on March 31, 1967, to declare the Act of June 24, 1937, P. L. 2501, Section 8.1, as amended, and now contained in the Act No. 21 of the Pennsylvania Legislature approved June 13, 1967, Section 432 (6), unconstitutional and to preliminarily enjoin defendants from enforcing the said section and to make said injunction permanent after hearing. At the same time appellees moved to convene a three judge District Court under 28 U. S. C. Section 1915.

On March 31, 1967, the appellees were granted leave to proceed in forma pauperis and their motion for a temporary restraining order was denied.

Hearings were held on May 3, 1967 and May 29, 1967. Appellees' motion that the action be maintained as a class action was granted by District Judge Joseph S. Lord, III, on May 31, 1967.

The court made findings of facts and conclusions of law on June 13, 1967 and issued a preliminary injunction against the defendants as to Juanita Smith and her minor children.

On October 3, 1967, appellees' motion to extend the preliminary injunction to the class was denied.

On December 18, 1967, the court handed down its opinion declaring Section 432 (6) of the "Public Welfare Code", Act No. 21 of the Pennsylvania Legislature approved June 13, 1967, unconstitutional as a violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

ARGUMENT

I.

Introduction

In December, 1967, the court below[1], in a two to one decision[2], ruled unconstitutional a Pennsylvania Statutory provision[3] requiring residence in the Commonwealth for a period of one year as a qualification for public assistance.

On January 29, 1968, another Federal District Court in the Commonwealth[4], in a two to one decision[5], upheld the constitutionality of the same provision. *Waggoner v. Rosenn,* F. Supp.

The Pennsylvania District Court cases were preceded by three 1967, District Court decisions; *Thomp-*

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[1] United States District Court for the Eastern District of Penna, Before: Harry E. Kalodner, Circuit Judge, and Michael H. Sheridan, and Joseph S. Lord, III, District Judges.

[2] Judge Kalodner, dissenting.

[3] Section 432 (6) of the Pennsylvania Public Welfare Code, Act of June 13, 1967, P. L. (Act No. 21), formerly Section 8.1 of the Public Assistance Law, the Act of June 24, 1937, as amended, P. L. 2051, Purdon's Statute Annotated, Section 2508.1.

[4] The United States District Court for the Middle District of Penna. Before: Harry E. Kalodner, Circuit Judge, and Michael H. Sheridan, Chief Judge, and Frederick V. Follmer, District Judge.

[5] Judge Sheridan, dissenting.

son v. Shapiro, 270 F. Supp. 331 (D. Conn.); *Green v. Department of Public Welfare*, 270 F. Supp. 173 (D. Del.); *Harrell v. Tobriner*, F. Supp. (D. D. C.), all ruling durational residence requirements to be unconstitutional.

Durational residence requirements for public assistance have been a traditional feature of public assistance programs since their inception in the 1930's. While the merits of such provision have been debated on a policy basis over the years, they have not been challenged on constitutional grounds[6] until recently[7].

Plaintiffs in the court below challenged the constitutionality of the durational residence requirement for public assistance on the grounds that it (1) infringed a constitutionally protected right of freedom of movement and (2) denied equal protection of the laws to newcomers as compared to settled residents of the state.

The court below based its decision solely on the ground that the challenged residence requirement constituted a violation of the Equal Protection Clause to the Fourteenth Amendment to the Constitution of the United States. The majority did not address

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[6] The impetus behind this line of attack may perhaps be attributable in part to special projects on law and social welfare of New York and Columbia Universities. See Harvith: "The Constitutionality of Residence Tests for General and Categorical Assistance Programs", 1966 Calif. L. Rev. 567, and in part to the establishment of Office of Economic Opportunity sponsored Community Legal Services Offices.

[7] An exception is the case of People ex rel Heydenreich v. Lyons, 374 Ill. 557, 30 N. E. 2d 46 (1940).

themselves to the plaintiffs' legal argument that the residence requirement involved an unconstitutional abridgment of freedom of movement, since they found, as a fact, that such provisions do not necessarily prevent interstate migration.

Smith v. Reynolds, 277 F. Supp. 65, at p. 66.

On this subject the dissenting opinion stated:

> "In my opinion that alternative claim is so specious and unfounded that it does not merit extended discussion...
>
> "The fact that the one-year eligibility requirement may operate to affect a decision to travel into Pennsylvania cannot by any stretch of the imagination be construed as a "statutory" bar to travel".
>
> *Smith v. Reynolds*, supra. at p. 72.[8]

Appellants in this brief will show (1) that the durational residence requirement does not violate the Equal Protection Clause and (2) that the court below committed error by misapplying the relevant criteria laid down by this court.

[8] Appellants in their brief to the court below presented the argument that the durational residence requirement does not involve an unconstitutional abridgment of freedom of movement and this Honorable Court is respectfully referred to that presentation in Addendum A, p. 23.

II.

The One-Year Residence Requirement Does Not Violate the Equal Protection Clause

The Equal Protection criteria applicable to determining the constitutional validity of statutory classifications have been defined by this Honorable Court in.

Railway Express Agency, Inc. v. New York, 336 U.S. 106;

Allied Stores of Ohio, Inc. v. Bowers, 358 U.S. 522, and

Carrington v. Rash, 380 U.S. 69.

As stated in *McGowan v. Maryland,* 366 U.S. 420, at p. 425:

> "... the Fourteenth Amendment permits states a wide scope of discretion in enacting laws which affect some groups of citizens differently than others. The Constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the state's objective. State legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality. A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it."

Most recently this Honorable Court has said that the determination of the constitutionality of classifications in state legislation must be undertaken:

> ". . . In terms of its 'immediate objective' its 'ultimate impact' and its 'historical context' and the conditions existing prior to its enactment",
>
> *Reitman v. Mulkey,* 387 U.S. 369, at p. 373.

and that such legislation will be struck down only where "the State has significantly involved itself with invidious discrimination."

Reitman v. Mulkey, supra, at p. 380.

Accordingly, the issue in this case is whether a durational residence requirement for public assistance is capable of being construed as bearing a reasonable relation to a legitimate legislative purpose.[9]

The Pennsylvania "Public Welfare Code", Act of the Pennsylvania Legislature Approved June 13, 1967 (Act No. 21) states the legislative purpose in Section 401:

> "It is hereby declared to be the legislative intent to promote the welfare and happiness of all the people of the Commonwealth, by providing public assistance to all of its needy and distressed; that assistance shall be administered promptly and humanely with due regard for the preservation of family life, and without discrimination on account of race, religion or political affiliation; and that assistance shall be administered in such a way and manner as to encourage self-respect, self-dependency and the desire to be a good citizen and useful to society."

---

[9] This means that the state may not establish a classification promoting a purpose which patently offends values, affirmatively enshrined in the Constitution. *Loving v. Virginia* 368 U. S. 1.

This policy represents an attack on poverty with the help of annually appropriated tax funds. In order to determine whether any classification drawn by the statute can be reasonably related to the statutory purposes, it is essential to recognize that the stark reality of limited resources may make it impossible for the legislature to achieve the legislative goal completely. Surely, this does not mean that the legislature may not begin, may not make a reasonable allocation of the resources at hand to approach the objectives.

This Honorable Court has recognized this situation and has stated in *Railway Express Agency, Inc. v. New York,* supra, at p. 106:

> "It is no requirement of equal protection that all evils of the same genus be eradicated or none at all."

If the objective of providing a decent level of living to people between periods of productivity is valid, and there is not enough for all to go around, then the legislature must draw lines, must establish classifications. Eligibility conditions must be promulgated and grant levels set. Even if the process of budgeting and program development could be simplified to the point of dividing up the resources available to the program in grants among all potential recipients, the legislature must have a good idea, if not certain knowledge, of the number of recipients in the fiscal year. Economic indicators and information on birth and death rates may be sufficient to enable the legislature to plan and budget intelligently with respect to the population of Pennsylvania. But,

the legislature must be allowed to guard against the collapse of the program from unanticipated and uncontrollable events, however, unlikely. The one-year residence requirement can be explained and defended as such a predictive and "insurance" mechanism[10].

The legislature must surely be allowed great scope and leeway in its decision to promote the public assistance program.

McGowan v. Maryland, supra.

Suppose, for example, that the legislature determines that the resources presently available for the program are insufficient, in terms of existing eligibility standards, to provide grants at a level high enough to serve a constructive purpose for any recipient. Is the only alternative open to the legislature to raise financial eligibility standards? Appellants strongly content that there is nothing wrong or offensive, or so out of tune with contemporary standards of fairness, with the legislature insisting on some investment in the community as a condition of eligibility. If there is nothing wrong with such a concept, a one-year residence requirement is a perfectly legitimate, administratively feasible tool for the achievement of this objective. In this frame of reference, living in a community for one year can fairly be regarded as involving an investment. Apart from any payment of state and local taxes, persons who have lived in a community for a year have inevitable promoted the economy by channelling privately originated finances into the community's streams of commerce.

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[10] See Addendum A, p. 21.

Furthermore, the one-year residence requirement can be sustained as a reasonable administrative device for the prevention of fraud. The fact that recent arrivals in the Commonwealth, apparently financially eligible for assistance, are entitled to or in receipt of public assistance funds from another state would in many instances be established only after a considerable lapse of time.

Since restitution in such cases is obviously difficult or impossible, the prevention of such fraud is a legitimate objective and the residence test a reasonable device for achieving that objective.

Appellants find a compelling analogy in *Drueding v. Devlin*, 234 F. Supp. 721, aff. per curiam 380 U.S. 125[11] where this Court affirmed The Lower Court's Opinion that States may establish a one-year residence requirement for eligibility to vote in national elections. In that case the court based its decision on the underlying purposes of:

> (1) identifying the voter, and as a protection against fraud, and
>
> (2) to insure that the voter will become in fact a member of the community, and as such have a common interest in all matters pertaining to its government.

As pointed out above, the one-year residence requirement for Public Assistance serves similar purposes in that it prevents fraudulent receipt of duplicate benefits and requires an interest in the com-

[11] See also *Carrington v. Rash*, supra.

munity's financial position through contribution to the economy.

Public assistance has historically been a privilege or grant given by the state to needy persons, *Smith v. Reynolds*, supra, at p. 67.

The right to receive such assistance exists only by statutory authority and can be granted only within the conditions specified in the statute. The legislature in providing for public assistance may impose reasonable conditions upon the granting of such assistance. Since the Commonwealth of Pennsylvania has no obligation to make the state more attractive to nonresident indigents and, as set forth herein, there exist valid purposes to which the residence requirement is related, the constitutional validity of that condition must be upheld.

In brief, it is appellants' contention that where a statutory classification between persons does not patently offend values affirmatively enshrined in the Constitution (such as a discrimination on the basis of race, color, or religion), such classification may not be struck down unless it clearly bears no conceivable relation to promoting the statutory purpose. In the instant case, the appellants have shown that the one year residence requirement cannot be challenged as totally arbitrary and unrelated to the purposes of the public assistance program and that it does not, therefore, violate the Equal Protection Clause.

III.

The Lower Court Misapplied the Criteria of the Equal Protection Clause as Established by This Honorable Court

Under Section II, supra, at p. 11, appellants have referred to the criteria established by this court to test the validity of stautory classifications. The court below failed to apply these principles accurately. The whole tenor of the opinion hardly manifests any reluctance to strike down the challenged statutory provision. It bears little evidence of a thorough search for any state of facts that may reasonably be conceived to justify such provision. This point has been eloquently stressed in the dissenting opinion and in the court's opinion in *Waggoner v. Rosenn*, supra.

The court below states that its conclusion is supported by evidence which shows that the requirement of one year's residence as a condition to the receipt of public assistance has no logical basis and is wholly arbitrary in its application to needy residents of the Commonwealth. This claim is entirely unwarranted.

Defendants respectfully submit that all the evidence produced by plaintiffs is entirely without bearing on the constitutional problem to be resolved. The best demonstration of this is furnished by the court's own findings. The court found:

> "(1) The one-year residence requirement does not necessarily prevent migration to the State of

impoverished individuals, nor would the abolition of the requirement enhance the attractiveness of the Commonwealth to such persons. Thus, there would be no noticeable increase in the influx of newcomers, poor and otherwise, if the requirement was deleted.

"(2) Those persons who do come to Pennsylvania and find themselves in need of public assistance within the first year of their arrival do not, to any significant extent, emigrate to the State for the purpose of obtaining such aid. Although the fact that they may not at present obtain welfare benefits may tend to deter or discourage migration to the State, there is concededly no competent evidence that it does so in fact, nor is there evidence that newcomers, once arrived, depart once they discover their subordinate status. Those who come into the State (and later find themselves in need of public assistance) do so for reasons wholly unrelated to the incidental benefits of public welfare which might be available to them. In most instances, they come to accept or seek employment in the State, to rejoin or join family relations, or for health reasons. Seeking new opportunities or established contacts, they find themselves temporarily in need of public assistance; they apply for such help, and it is denied to them."

Smith v. Reynolds, supra, p. 66.

If the avowed purpose of the residence requirement was to discourage an influx of indigents to the Commonwealth, these findings would merely support

the conclusion that the residence requirement is an inefficient mechanism for accomplishing this purpose. It is hardly relevant to a determination of whether a classification between settled residents and new residents is constitutionally permissible.

The court's findings numbered (3) and (4), which relate to the insignificance of the cost in eliminating the residence requirement and the savings in administrative costs bear no relation to the question whether the challenged provision bears a reasonable relation to a legitimate statutory purpose. At best, such findings are attempts to second guess the wisdom of the legislature, which is a task not within the perogative of the court.

This court has recently stated in *Loving v. Virginia*, 388, U.S. 1, 87 S. Ct. 1817 at p. 1822:

> "In these cases, involving distinctions not drawn according to race, the court has merely asked whether there is any rational foundation for the discrimination, and has deferred to the wisdom of the state legislature."

And again, in *Flemming v. Nestor*, 363 U.S. 603, at page 611:

> "... it is not within our authority to determine whether the Congressional judgment expressed in that section is sound or equitable, or whether it comports well or ill with the purposes of the Act."

Finally, the court found:

> "(5) The Commonwealth can ascribe no purpose at all to the distinction made by the statute

between residents who have lived in the state for over one year and residents who have not . . ."

Smith v. Reynolds, supra. p. 67.

In fact, the Commonwealth presented the argument to the court below that the durational residence requirement fulfills the real and legitimate purpose of helping the legislature budget, on a yearly basis, sufficient funds to maintain and, if possible, to advance existing benefit levels within the limits of a predictable universe of recipients (see Addendum A, p. 21). The dissenting opinion and the majority opinion in *Waggoner v. Rosenn*, supra, recognized and accepted this proposition.

CONCLUSION

Appellants submit that the one year's residence requirement for public assistance promotes legitimate legislative purposes of Pennsylvania's public assistance program and does not violate any provisions of the United States Constitution.

Respectfully submitted,

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ADDENDA

(1) ADDENDUM A

DEFENDANTS' MEMORANDUM OF LAW

I.

INTRODUCTION

Plaintiffs challenge the constitutionality of Pennsylvania's durational residence requirements for public assistance on the grounds that they (1) infringe a constitutionally protected freedom of movement and (2) deny equal treatment to newcomers as compared to settled residents of the State.

Defendants' position is (1) that while there is a constitutionally protected right to free interstate travel, the residence requirements do not violate that right, and (2) to the extent that newcomers are treated differently from settled residents, this is justified by long-standing, well-established legitimate interests of the State.

Before analyzing plaintiffs' contentions, it is important to place the Pennsylvania public assistance program in context. It is thirty years old (Act of June 24, 1937, P.L. 2051, 62 P.S. Section 2501), and it

is conceded, even by plaintiffs, that there was no constitutional obligation on the Commonwealth to establish it and that there is not now a constitutional duty to maintain it. It did not when it was established, and it does not now pre-empt the field of assistance to the indigent. Rather, it operates together with other public and private welfare programs (see e.g., County Institution District Law, Act of June 24, 1937, P. L. 2017, 62 P.S. Section 2201, The County Code, Act of August 9, 1955, P. L. 323, Sections 2164, 2165, 2175, 16 P. S. Sections 2164, 2165, 2175, and The Administrative Code of 1929, Act of April 9, 1929, P. L. 177, Section 2310, 71 P.S. Section 600). This negates plaintiffs' implicit assumption that the public assistance program constitutes the only avenue of resources to indigent in-migrants.

The durational residence requirements, which have been a feature of the program since its inception, have not heretofore been constitutionally challenged in Pennsylvania. In fact, prior to this year, the one single direct challenge of such requirements anywhere in the United States was firmly rejected (*People ex rel. Heydenreich v. Lyons*, 374 Ill. 557, 30 N.E. 2d 46 (1940)).

II.

ARGUMENT

A. Pennsylvania's Durational Residence Requirements for Public Assistance Do Not Infringe a Constitutionally Protected Right to Freedom of Movement

Plaintiffs' memorandum of law is in large measure devoted to supporting the proposition that there is a constitutionally protected right of freedom of movement.

Defendants do not contest the existence of such a right, whether under the Commerce Clause[1] (as per the Court in *Edwards v. California,* 314 U.S. 160 (1941))[2], or as a privilege and immunity of national citizenship[3] (as per the concurring opinions in *Edwards,* supra), or pursuant to any other constitutional source (*United States v. Guest,* 383 U.S. 745 (1966)).

Plaintiffs then do not even attempt to prove, but cavalierly assume, that the durational residence requirements infringe the right to free interstate

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[1] U. S. Const. art. 1, Section 8, cl. 3.

[2] The Commerce Clause cannot aid plaintiffs in this context since there is clearly no State interference with Congressional power in view of the Congressional permission of a public assistance residence requirement up to one year (49 Stat. 627 (1935), as amended, 42 U.S.C. Section 602 (b) (2) (1964)).

[3] U. S. Const. amend. XIV, Section 1.

movement. The residence requirements do not bar entry to the State. Plaintiffs do not complain of being excluded from Pennsylvania. They are here and may stay here. What they want is a money grant[4]. The fallacy of plaintiffs' assumption that the residence requirements are equivalent to a direct statutory bar on access to the State (as e.g., in *Edwards*, supra), can be demonstrated in a number of ways:

(a) Plaintiffs assert (Memorandum, pp. 6-7) that the legislative purpose of the residence requirements was to discourage an influx of poor in-migrants. Plaintiffs adduce no direct evidence of such legislative intent, but merely infer it from the statutory provision. The inference is illegitimate, because the statute itself merely provides for the temporary withholding of public assistance benefits for one year from persons who have entered the State. The constitutionality of a statute may not be legitimately challenged merely in terms of an assumed legislative intent. In *Flemming v. Nestor*, 363 U.S. 603 (1960), the United States Supreme Court upheld a provision of the Social Security Act (Section 202(n), 49 Stat. 623 (1935), as amended, 42 U.S.C. Section 402(n) (1964)), terminating old-age benefits for aliens deported from the United States for having been members of the Communist party. To contentions that this provision evinced an unconstitutional legislative intent, Mr. Justice Harlan, for the Court, in part, responded (p. 617):

> "... only the clearest proof could suffice to establish the unconstitutionality of a statute on

[4] N.T. 58.

such a ground. Judicial inquiries into Congressional motives are at best a hazardous matter, and when that inquiry seeks to go behind objective manifestations it becomes a dubious affair indeed. Moreover, the presumption of constitutionality with which this enactment, like any other, comes to us forbids us lightly to choose that reading of the statute's setting which will invalidate it over that which will save it. . . ."

(b) In this context *any* nonaccess to public assistance funds would have to be regarded by plaintiffs as equivalent to a bar on entry to the State. But it is quite clear that the State is not under a duty to make any public assistance benefits available to anyone. How then can plaintiffs, in this context, complain of *any* non access to public assistance benefits?

(c) Plaintiffs contend, in effect, that any arguable disincentive to in-migration must be regarded as the equivalent to a direct bar on entry[5]. Assuming, for the moment, that potential in-migrants regulate their conduct in terms of a finely calibrated incentive-disincentive calculus, plaintiffs' argument here must rise to the preposterous heights that any State considered for in-migration must offer facilities and benefits at least equivalent to those of the State of present residence. Even in the public assistance context itself, for example, would not lower levels of benefits be as crucial a disincentive as the residence

[5] Plaintiffs have conceded, for example, that their position would be the same if the residence requirement were two weeks rather than one year (N. T. 60).

requirements in question? And in the context of residence requirements generally, are plaintiffs challenging the whole gamut of time-honored minimum contact requirements, such as residence requirements for voting, employment, occupational, professional and other purposes?

(d) In these days of sociological sophistication it is surely somewhat presumptuous of plaintiffs to ask the Court to rely entirely on their mere speculations as to the actual effect of residence requirements on patterns of migration. If no completed study was at hand[6] plaintiffs surely should have buttressed their contention with at least a limited study of their own. As it is, the only fact of record relevant in this context is that plaintiffs themselves certainly were not deterred from coming to Pennsylvania. Finally, even if speculation is to be considered, it is surely more reasonable to hazard the guess that public assistance benefits do not constitute a significant determinant of migration. People who are sufficiently motivated to uproot themselves and their families in search of a better life usually set their sites beyond the dole.

It is clear, therefore, that there is no basis whatever for equating the durational residence requirements for public assistance with provisions barring

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[6] Defendants know of only one such study—"A Study of Residence Requirements and Reciprocal Agreement in the Public Assistance Program in Pennsylvania"—a dissertation in Social Work, University of Pennsylvania, 1959, by Roland John Eugene Artigues, which concludes that the availability of public assistance benefits does *not* constitute a significant determinant of migration.

entry to the State. Accordingly, the residence requirements cannot fall under the proscriptions of State action barring entry to the State. Such proscriptions are obviously the corollary of the right to free interstate movement, whatever the constitutional sources of that right may be. For some reason, however, plaintiffs' memorandum contains a separate section charging that the residence requirement provision of the Pennsylvania Public Assistance Law unconstitutionally conditions public assistance on the surrender by plaintiffs of their liberty to travel (pp. 14-16). Since it has been shown above, that the residence requirements do not infringe upon the right to travel, it is, perhaps, sufficient to state that public assistance cannot be said to be "unconstitutionally Conditioned" on the surrender of the "liberty" to travel. However, defendants wish to comment briefly on the argument advanced by plaintiffs.

It is agreed that although Pennsylvania is under no duty to establish and maintain a public assistance program, if it chooses to do so it may not in the process impose unconstitutional conditions. For example, if Pennsylvania were to exclude from its program Negroes or members of certain religious denominations or people who had expressed certain political opinions, such exclusions would clearly be void as in derogation of clearly established constitutional rights. Plaintiffs' reference to *Sherbert v. Verner,* 374 U.S. 398 (1963), where unemployment compensation was withheld from a person who, for religious reasons, refused to return to a job which required Saturday work, and *Speiser v. Randall,* 357 U.S. 513 (1958), where a tax exemption was conditioned on an affirm-

ance of loyalty to the State government, merely illustrates this principle. Plaintiffs then cite *Kent v. Dulles*, 357 U.S. 116 (1958), *Aptheker v. United States*, 378 U.S. 500 (1964), and *United States v. Guest*, 383 U.S. 745, at 769-770 (1966), in an attempt to show that the right to travel is of the same order as First Amendment rights. However this may be, plaintiffs cannot overcome by this route, any more than by any other, the clear fact that residence requirements simply cannot be regarded as equivalent to a bar on entry to the State. The residence requirements do not infringe the right, or liberty to travel, by way of "unconstitutional conditions", or otherwise.

B. The Durational Residence Requirements for Public Assistance Do Not Deny Plaintiffs Equal Protection of the Laws

The test for ascertaining whether legislation meets the requirements of the equal protection clause[7] is "whether the classifications drawn in a statute are reasonable in light of its purpose" (*Carrington v. Rash,* 380 U.S. 89, 93 (1965), quoting *McLaughlin v. Florida,* 379 U.S. 1194, 191 (1964). In *Heydenreich,* supra, involving the only prior constitutional challenge of durational residence requirements for public assistance, the Supreme Court of Illinois stated:

> " . . . The constitutional guaranty of equal protection of the law is interposed against discriminations that are purely arbitrary. The Fourteenth Amendment does not purport to prevent a State from adjusting its legislation to differences in situation and to that end to make a justifiable classification. It merely requires that the classification shall be based on a real and substantial difference having a rational relation to the subject of the particular legislation. (citing cases) The classification need not, however, be accurate, scientific, logical or harmonious, so long as it is not arbitrary and will accomplish the legislative design. (citing cases) In particular, the classification of beneficiaries such as paupers, while not only permissible, but also necessary must none the less be reasonable . . . The judiciary will not interfere with such

[7] U. S. Const. amend. XIV, Section 1.

classification when made unless it is clearly unreasonable. (citing case)."

Plaintiffs contend that the classification effected by the durational residence requirements is unreasonable, because it must rest on one of two justifications: (1) the intended exclusion of indigent inmigrants, and (2) the intended prevention of abuse of the public assistance program by persons coming to Pennsylvania with no motive but to obtain assistance. The first purpose, plaintiffs argue, is clearly improper under *Edwards,* supra, and *Guest,* supra, and the second purpose, even if valid, does not support the reasonableness of the durational residence requirements because they sweep too broadly.

The fallacy of plaintiffs' argument is that they have simply ignored the clearly reasonable and legitimate bases for the durational residence requirements. The avowed purpose of the public assistance program, to render assistance to needy and distressed residents of Pennsylvania, immediately raises for the State Legislature the omnipresent and continuous problem of *a reasonable allocation of limited resources.* The program operates on the basis of yearly appropriations from State revenues, partially matched by the Federal government. While progress is being made, the benefit levels of the program are still below the minimum standards of health and decency. Year in, year out, the public program competes with other programs for the tax dollar and within the program the various categories of service tie with one another. Within the universe of the actual population of Pennsylvania the number of recipients fluctuates, of course, but within predictable limits.

Does it not follow then, that without attributing to the Legislature an intent to exclude indigent persons from migrating to Pennsylvania, there is a real and legitimate purpose to plan and budget, on a yearly basis, to maintain and, if possible, to advance existing benefit levels within the limits of a predictable universe of recipients? The residence requirements of the Public Assistance Law do not bar indigent persons from entering and remaining in Pennsylvania, they merely preclude for one year the participation of such persons in a limited benefit program.

If a residence requirement is to serve predictive purposes in terms of a universal population, the advantages of a specific durational test are clear and obvious. But a specific durational test also promotes other objectives. It greatly increases administrative feasibility. The advantage in this is not merely the increased convenience of the administrative personnel. Time and labor saved in administration effect a reduction in administrative costs and make more funds available for benefits. Moreover, where a program calls for the making available of benefits, it is often important that these benefits be made available promptly. It is also arguable that, in terms of the specificity of notice, a durational test is of advantage to potential applicants.

The actual duration of the period of residence required is not in issue in this case[8]. But the period of one year is clearly not unreasonable in view of its relationship to the yearly appropriation mechanism

[8] N. T. 60.

and also in light of the specific Congressional provision permitting, with respect to Aid to Needy Families with Children a one year residence requirement[9].

Accordingly, it is evident that the classification drawn by the durational residence requirements is eminently reasonable in light of the purpose of the Public Assistance Law, and plaintiffs are not denied equal protection of the laws.

III.

CONCLUSION

For the foregoing reasons, defendants request the Court to declare the Act of June 24, 1937, P.L. 2051, Section 8.1, added by the Act of August 26, 1965, P.L. 389, 62 P. S. Section 2508.1, as constitutional and to deny plaintiffs any relief.

Respectfully submitted,
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[9] 49 Stat. 627 (1935), as amended, 42 U.S.C. Section 602 (b) (2) (1964).

(2) ADDENDUM B

DEFENDANTS' SUPPLEMENTARY MEMORANDUM OF LAW

I.

INTRODUCTION

At the hearing of May 3, 1967, before this Court, plaintiffs filed a memorandum of law in support of plaintiffs' motion for preliminary injunction. Defendants then filed a memorandum of law on the merits and plaintiffs, in turn, filed a supplementary memorandum of law in support of plaintiffs' motion for a preliminary injunction and, after further hearing, a brief in support of plaintiffs' prayer for declaratory judgment and permanent injunction.

The purpose of this supplementary memorandum is to attempt to sharpen the focus on the issues before the Court in the light of plaintiffs' latest presentation.

II.

STATEMENT OF THE CASE

Plaintiffs' statement of the case is accurate[1] and is endorsed by the defendants.

[1] With the technical exception that the relevant statutory provision is now Section 432 (6) of the "Public Welfare' Code", the Act of June 13, 1967, P. L. (Act No. 21). For the sake of simplicity statutory references are to the law as it was at the time plaintiffs were denied benefits.

III.

STATEMENT OF FACTS

Plaintiffs' statement of the facts begins by referring to their prior memorandum of Law and their request for findings of fact on preliminary injunction, as presenting the particular facts relating to this case. In the opinion of the defendants, the facts relevant to the issue before the Court can be briefly and succinctly stated as follows: Plaintiffs were denied public assistance on the sole ground that they failed to comply with the one year's residence requirement imposed by Section 8.1 of the Pennsylvania Public Assistance Law, the Act of June 24, 1937, P.L. 2051, as amended, 62 P. S. Section 2508.1.

Plaintiffs' "Statement of the Facts" then proceeds with a combination of fact and argument which amounts to an eloquent plea for the elimination of durational residence requirements for public assistance. Such a plea should be addressed to the Legislature, not to this or any other Court. It is defendants' earnest plea to this Court, as a guardian of constitutional government, that the complex issues of policy involved in the establishment, change and maintenance of a public assistance system should be left in their broadest terms to the determination of the elected representatives of the people.

IV.

ARGUMENT

A. The One Year Residence Requirement Does Not Violate the Equal Protection Clause

In their first preliminary memorandum, plaintiffs contended that the classification effected by the durational residence requirement is unreasonable because it rests either on the intended exclusion of indigent in-migrants—an improper purpose under *Edwards v. California,* 314 U. S. 160 (1941) and *United States v. Guest,* 383 U.S. 745 (1966), or the intended prevention of abuse of the Public Assistance program by persons coming to Pennsylvania with no motive but to obtain assistance—a purpose which, even if valid, does not support the broad sweep of the classification.

Defendants, in their memorandum of law, pointed out that the residence requirement, like other limitations on a grant program, must be assessed against the background of the Legislature's function to make reasonable allocations of limited resources. This position was assailed in an amicus brief of the Health and Welfare Council, Inc. on the basis, in effect, that a one year residence requirement does not render the entire universe of public assistance recipients predictable. With this defendants will readily agree. However, our point was and remains that where a Legislature is faced with a problem of setting limits to a grant program, a residence qualification is one of

a number of obvious and traditional devices, one which unquestionably excludes a definite set of unknown potential recipients. To what extent a group of potential recipients can be estimated with accuracy is beside the point; in the matter of fiscal limitation and regulation the Legislature must surely be permitted to take out insurance against possibly inaccurate estimates by setting definitive boundaries to the program.

Plaintiffs' brief merely asserts that any minimum contact requirement is unreasonable and provides an illustration of a situation where one family is eligible and another is not. This merely serves to show one possible application of the law without in the slightest illuminating its reasonableness or unreasonableness.

Defendant's brief also stated that if a residence qualification is to serve as part of the program, a specific durational test promotes administrative feasibility. This was misunderstood by plaintiffs, as is evidenced by a footnote on page 12 of their brief. Defendants never stated that the public assistance program is easier to administer with a residence test, durational or otherwise, than without one. Our point is that if there is to be a residence requirement, a specific durational test is easier to apply than a test which depends on intent or other variables.

In the recent case of *Vivian Marie Thompson v. Bernard Shapiro, Commissioner of Welfare of the State of Connecticut*, United States District Court of Connecticut, Civil No. 11,821, the United States District Court ruled that State's durational residence requirement for public assistance unconstitutional, on

the basis of the equal protection clause, in view of the State's improper purpose of discouraging the in-migration of indigents. The Court makes no reference to any other, possibly reasonably purposes.

The dissent in that case expresses the view that the residence requirement is a reasonable one directly related to the problems sought to be governed. In support of this proposition, the dissent refers to the longstanding prevalence of such requirements in forty other states, the specific Congressional authority for such requirements and the statement that:

> "* * * It is a proper function of the legislature to enact such reasonable statutory controls, under the police powers reserved to the state in the Federal Constitution, that its obligations to aid the needy of the state may continue to be generously fulfilled. (Citation omitted)."

Over and above this, it is surely important to stress that residence requirements of one sort or another have been used as a time honored device to restrict certain specific benefits and advantages to those who have established a demonstrable bond, a nexus, with the community. What is unreasonable in a limitation of a tax-funded grant program that says, in effect, "We will help you, if you are needy, once you have lived with us for at least a year"?

If it is agreed that the Legislature does have some power to regulate and limit the public assistance program, in terms of residence, the only question that remains is whether one year is too long. Surely the Congressional authorization for a residence requirement up to one year endows the State's action in this

respect with at least prima facie reasonableness. When we take into consideration with this the relationship to yearly budgeting, the one year requirement must, we contend, be regarded as a reasonable minimum contact test for the purposes of the public assistance program.

In another effort to show the unreasonableness of the residence requirements, plaintiffs introduced testimony of estimates to the effect that the elimination of this requirement from the law would cost only some 1,600,000 State dollars a year and a slightly lesser amount in Federal matching dollars. This, plaintiffs contend, is an insignificant amount when considered along side the State's total public assistance of about $355,000,000. The estimated cost of repeal of the residence provision, indeed, amounts to a very small fraction of the amount budgeted for the total assistance program, but this is hardly a determinative measurement of the reasonableness of the residence requirement. In the first place defendants respectfully contend that the disposition of over one million tax dollars is always a matter of significance to the Legislature and the taxpayers, in absolute terms. Secondly, it must be remembered that throughout the thirty years of the existence of the public assistance program the Legislature has never appropriated sufficient funds to meet the requirements of the program in terms of minimum standards of health and decency. There is no evidence in the record that a cut back of $1,600,000 in one of the other phases of the program would not cause real hardship to some group of actual or potential recipients.

B. The Residence Requirement Does Not Abridge the Right to Freedom of Movement

Plaintiffs' argument, as originally presented in their memorandum of law and cursorily repeated in their brief is this: There is a constitutionally protected right to travel freely from state to state. Any statute which directly bars freedom of movement is, therefore, unconstitutional. Moreover, a state may not do indirectly what it may not do directly and, therefore, any State action that has the effect of discouraging free interstate movement is also unconstitutional. This is also the position taken by the Court in *Thompson v. Shapiro*, supra. As the Court there stated:

> "Because (the residence requirement law) has a chilling effect on the right to travel, it is unconstitutional".

Defendants' memorandum of law demonstrated the fallacy of this argument in some detail. Neither the Court in *Thompson v. Shapiro*, supra, nor plaintiffs in their brief come to grips with defendants' arguments in this respect.

Clearly, there is a constitutionally protected right to travel freely from state to state and to settle in any state. But the very existence of this right implies a choice to select for temporary sojourn or permanent settlement any of the States *as they are*—with their existing laws, institutions, facilities and programs. Plaintiffs' argument, logically applied, without stretching or extension, implies a constitutional duty

on States to take whatever action is necessary not to make the State unattractive for any potential group of visitors or in-migrants. This is clearly absurd. And, indeed, both the Court in *Thompson*, supra, and plaintiffs, concede, in the context of this case, that there is no affirmative duty on a State to establish or maintain a public assistance program. This concession is fatal to the argument that they propound. Whether the nonavailability of public assistance benefits to potential in-migrants is due to a durational residence requirement, or the nonexistence of a public assistance program, or any other reason, the effect on the potential in-migrants is equally chilling.

Nor does resort to *Sherbert v. Verner*, 374 U. S. 398 (1963), help plaintiffs in this respect. There the State, in the context of the unemployment compensation program, directly abridged plaintiff's right to the free exercise of her religion by ruling that Saturday work was suitable for her in spite of her beliefs. In this case defendants are neither challenging nor precluding the exercise of plaintiffs' right to travel or to settle in Pennsylvania. They are merely saying, "If you choose to settle in Pennsylvania you must take us as you find us. And at present we have a public assistance law with a reasonable one year residence requirement." That is all.

C. There is Adequate Justification for Pennsylvania's Residence Requirement

The plaintiffs' brief has a separate heading contending that there is no adequate State justification for the durational residence requirement. In fact, plaintiffs' argument under this heading are policy advocacy. Legally, this proposition is, of course, relevant to an assessment of the residence requirement in terms of the equal protection clause. The defendants' position is clearly expressed under that topic.

V.

CONCLUSION

For the foregoing reasons, the defendants request the Court to declare the Act of June 24, 1937, P. L. 2051, Section 8-1, added by the Act of August 26, 1965, P. L. 389, 62 P.S. Section 2508.1, now re-enacted as Section 432 of the "Public Welfare Code", the Act of June 13, 1967, P. L. ..... (Act No. 21), as constitutional and to deny plaintiffs any relief.

Respectfully submitted,

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